

House File 2433 - Reprinted

HOUSE FILE 2433
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HF 2257)

(As Amended and Passed by the House March 13, 2012)

A BILL FOR

1 An Act relating to state agency decision making.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 9A.105, subsection 1, paragraph h, Code
2 2011, is amended to read as follows:

3 h. Whether the applicant or any person named pursuant to
4 paragraph "g" has been convicted of a ~~crime~~ felony that, if
5 committed in this state, would be a crime involving moral
6 turpitude ~~or which is a felony~~, and identify the ~~crime~~ felony.

7 Sec. 2. Section 9A.106, subsection 2, paragraph a, Code
8 2011, is amended to read as follows:

9 a. Been convicted of a ~~crime~~ felony that, if committed in
10 this state, would be a crime involving moral turpitude ~~or a~~
11 felony.

12 Sec. 3. Section 17A.3, subsection 1, paragraph a, Code 2011,
13 is amended to read as follows:

14 a. (1) Adopt as a rule a description of the organization of
15 the agency which states the general course and method of its
16 operations, the administrative subdivisions of the agency and
17 the programs implemented by each of them, a statement of the
18 mission of the agency, and the methods by which and location
19 where the public may obtain information or make submissions or
20 requests.

21 (2) Each board, commission, or other multimember agency
22 shall follow Robert's rules of order, in governing the conduct
23 of agency meetings unless it is inconsistent with Iowa law.

24 Sec. 4. Section 17A.4, subsection 1, paragraph b, Code 2011,
25 is amended to read as follows:

26 b. (1) Afford all interested persons not less than twenty
27 days to submit data, views, or arguments in writing, including
28 in an electronic format. If timely requested in writing by
29 twenty-five interested persons, by a governmental subdivision,
30 by the administrative rules review committee, by an agency, or
31 by an association having not less than twenty-five members, the
32 agency must give interested persons an opportunity to make oral
33 presentation.

34 (2) The agency shall provide an opportunity to make these
35 oral presentations using the Iowa communications network

1 or other electronic means if a request is received from
 2 twenty-five interested persons residing in the same city or
 3 county.

4 (3) The opportunity for oral presentation must be held
 5 at least twenty days after publication of the notice of its
 6 time and place in the Iowa administrative bulletin. The
 7 agency shall consider fully all written and oral submissions
 8 respecting the proposed rule. Within one hundred eighty
 9 days following either the notice published according to the
 10 provisions of paragraph "a" or within one hundred eighty
 11 days after the last date of the oral presentations on the
 12 proposed rule, whichever is later, the agency shall adopt a
 13 rule pursuant to the rulemaking proceeding or shall terminate
 14 the proceeding by publishing notice of termination in the Iowa
 15 administrative bulletin.

16 Sec. 5. Section 17A.4, subsection 2, Code 2011, is amended
 17 to read as follows:

18 2. An agency shall include in a preamble to each rule
 19 it proposes or adopts a brief explanation of the principal
 20 reasons for its action a specific reference to the Code
 21 section or sections being implemented and a concise statement
 22 of the principal reasons for and against the rule adopted,
 23 incorporating in the statement the reasons for overruling
 24 considerations urged against the rule and, if applicable, a
 25 brief explanation of the principal reasons for its failure
 26 to provide in ~~that~~ the rule for the waiver of the rule in
 27 specified situations if no such waiver provision is included
 28 in the rule. ~~This explanatory requirement does not apply when~~
 29 ~~the agency adopts a rule that only defines the meaning of a~~
 30 ~~provision of law if the agency does not possess delegated~~
 31 ~~authority to bind the courts to any extent with its definition.~~
 32 ~~In addition, if requested to do so by an interested person,~~
 33 ~~either prior to adoption or within thirty days thereafter, the~~
 34 ~~agency shall issue a concise statement of the principal reasons~~
 35 ~~for and against the rule adopted, incorporating therein the~~

1 ~~reasons for overruling considerations urged against the rule.~~
2 ~~This concise statement shall be issued either at the time of~~
3 ~~the adoption of the rule or within thirty-five days after the~~
4 ~~agency receives the request.~~

5 Sec. 6. Section 17A.4, subsection 3, Code 2011, is amended
6 to read as follows:

7 3. a. ~~When an agency for good cause finds that notice and~~
8 ~~public participation would be unnecessary, impracticable, or~~
9 ~~contrary to the public interest~~When the statute so provides, or
10 with the approval of the administrative rules review committee,
11 if the committee finds good cause that notice and public
12 participation would be unnecessary, impracticable, or contrary
13 to the public interest,~~the provisions of subsection 1 shall be~~
14 ~~inapplicable. The agency shall incorporate in each rule issued~~
15 ~~in reliance upon this provision either the finding and a brief~~
16 ~~statement of the reasons for the finding, or a statement that~~
17 ~~the rule is within a very narrowly tailored category of rules~~
18 ~~whose issuance has previously been exempted from subsection 1~~
19 ~~by a special rule relying on this provision and including such~~
20 ~~a finding and statement of reasons for the entire category.~~

21 b. (1) ~~If the administrative rules review committee by~~
22 ~~a two-thirds vote, the governor, or the attorney general~~
23 ~~files with the administrative code editor an objection to the~~
24 ~~adoption of any a rule or portion of a rule pursuant to this~~
25 ~~subsection, that the rule or portion of the rule shall cease~~
26 ~~to be effective one hundred eighty days after the date the~~
27 ~~objection was filed. A~~

28 (2) ~~If the administrative rules review committee files with~~
29 ~~the administrative code editor an objection to the adoption of~~
30 ~~a rule or portion of a rule pursuant to this subsection, the~~
31 ~~administrative rules review committee, by a separate two-thirds~~
32 ~~vote, may suspend the applicability of the rule or portion~~
33 ~~of the rule until the rule ceases to be effective under this~~
34 ~~paragraph "b". The determination to suspend the applicability~~
35 ~~of the rule or portion of the rule shall be included in the copy~~

1 of the objection to be forwarded to the agency.

2 c. If an objection to a rule is filed under this subsection,
3 a copy of the objection, properly dated, shall be forwarded to
4 the agency at the time of filing the objection. In any action
5 contesting a rule or portion of a rule adopted pursuant to
6 this subsection, the burden of proof shall be on the agency to
7 show that the procedures of subsection 1 were impracticable,
8 unnecessary, or contrary to the public interest and that, if a
9 category of rules was involved, the category was very narrowly
10 tailored.

11 Sec. 7. Section 17A.4, subsection 7, Code 2011, is amended
12 to read as follows:

13 7. a. Upon the vote of two-thirds of its members the
14 administrative rules review committee may delay the effective
15 date of a rule or portion of a rule seventy days beyond that
16 permitted in section 17A.5, unless the rule was promulgated
17 under section 17A.5, subsection 2, paragraph "b". This
18 provision shall be utilized by the committee only if further
19 time is necessary to study and examine the rule. If the
20 rule was promulgated under section 17A.5, subsection 2,
21 paragraph "b", the administrative rules review committee,
22 within thirty-five days of the effective date of the rule and
23 upon the vote of two-thirds of its members, may suspend the
24 applicability of the rule or portion of the rule for seventy
25 days.

26 b. Notice of an effective date that was delayed under this
27 provision shall be published in the Iowa administrative code
28 and bulletin.

29 Sec. 8. Section 17A.4, Code 2011, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 9. Upon the vote of two-thirds of its
32 members, the administrative rules review committee, following
33 notice of intended action as provided in subsection 1 and prior
34 to adoption of a rule pursuant to that notice, may suspend
35 further action relating to that notice for seventy days.

1 Notice of a notice of intended action that was suspended under
2 this provision shall be published in the Iowa administrative
3 code and bulletin.

4 Sec. 9. NEW SECTION. 17A.6A Rulemaking internet site.

5 1. Subject to the direction of the administrative rules
6 coordinator, each agency shall make available to the public
7 a uniform, searchable, and user-friendly rules database,
8 published on an internet site.

9 2. An agency's rulemaking internet site shall also make
10 available to the public all of the following:

11 a. A brief summary of the rulemaking process, including a
12 description of any opportunity for public participation in the
13 process.

14 b. Process forms for filing comments or complaints
15 concerning proposed or adopted rules.

16 c. Process forms and instructions for filing a petition for
17 rulemaking, a petition for a declaratory order, or a request
18 for a waiver of an administrative rule.

19 d. Any other material prescribed by the administrative rules
20 coordinator.

21 3. To the extent practicable, the administrative rules
22 coordinator shall create a uniform format for rulemaking
23 internet sites.

24 Sec. 10. Section 17A.8, subsection 4, Code 2011, is amended
25 to read as follows:

26 4. a. The committee shall ~~choose a chairperson from its~~
27 ~~membership and~~ prescribe its rules of procedure. The committee
28 may employ a secretary or may appoint the administrative code
29 editor or a designee to act as secretary.

30 b. The chairperson of the committee shall be chosen as
31 provided in this paragraph. For the term commencing with the
32 convening of the first regular session of each general assembly
33 and ending upon the convening of the second regular session
34 of that general assembly, the chairperson shall be chosen by
35 the committee from its members who are members of the house of

1 representatives. For the term commencing with the convening
 2 of the second regular session of each general assembly and
 3 ending upon the convening of the first regular session of the
 4 next general assembly, the chairperson shall be chosen by the
 5 committee from its members who are members of the senate. A
 6 vacancy shall be filled in the same manner as the original
 7 appointment and shall be for the remainder of the unexpired
 8 term of the vacancy.

9 Sec. 11. Section 17A.8, subsection 9, Code 2011, is amended
 10 to read as follows:

11 9. a. Upon a vote of two-thirds of its members, the
 12 administrative rules review committee may delay the effective
 13 date of a rule or portion of a rule until the adjournment
 14 of the next regular session of the general assembly, unless
 15 the rule was promulgated under section 17A.5, subsection 2,
 16 paragraph "b". If the rule was promulgated under section
 17 17A.5, subsection 2, paragraph "b", the administrative rules
 18 review committee, within thirty-five days of the effective date
 19 of the rule and upon the vote of two-thirds of its members,
 20 may suspend the applicability of the rule or portion of the
 21 rule until the adjournment of the next regular session of the
 22 general assembly.

23 b. The committee shall refer a rule or portion of a rule
 24 whose effective date has been delayed or applicability has
 25 been suspended to the speaker of the house of representatives
 26 and the president of the senate who shall refer the delayed
 27 or suspended rule or portion of the rule to the appropriate
 28 standing committees of the general assembly. A standing
 29 committee shall review a the rule within twenty-one days
 30 after the rule is referred to the committee by the speaker
 31 of the house of representatives or the president of the
 32 senate and shall take formal committee action by sponsoring
 33 a joint resolution to disapprove the rule, by proposing
 34 legislation relating to the rule, or by refusing to propose
 35 a joint resolution or legislation concerning the rule. The

1 standing committee shall inform the administrative rules review
 2 committee of the committee action taken concerning the rule.
 3 If the general assembly has not disapproved of the rule by a
 4 joint resolution, the rule shall become effective. The speaker
 5 of the house of representatives and the president of the senate
 6 shall notify the administrative code editor of the final
 7 disposition of each rule or portion of a rule whose effective
 8 date has been delayed or whose applicability has been suspended
 9 pursuant to this subsection. If a the rule is disapproved, ~~it~~
 10 the rule shall not ~~become~~ be effective and the agency shall
 11 rescind the rule. ~~This section shall not apply to rules made~~
 12 ~~effective under section 17A.5, subsection 2, paragraph "b".~~
 13 Sec. 12. Section 17A.23, Code 2011, is amended to read as
 14 follows:

15 **17A.23 Construction — delegation of authority.**

16 1. Except as expressly provided otherwise by this chapter
 17 or by another statute referring to this chapter by name, the
 18 rights created and the requirements imposed by this chapter
 19 shall be in addition to those created or imposed by every other
 20 statute in existence on July 1, 1975, or enacted after that
 21 date. If any other statute in existence on July 1, 1975, or
 22 enacted after that date diminishes a right conferred upon a
 23 person by this chapter or diminishes a requirement imposed upon
 24 an agency by this chapter, this chapter shall take precedence
 25 unless the other statute expressly provides that it shall take
 26 precedence over all or some specified portion of this ~~named~~
 27 cited chapter.

28 2. This chapter shall be construed broadly to effectuate
 29 its purposes. This chapter shall also be construed to apply
 30 to all agencies not expressly exempted by this chapter or by
 31 another statute specifically referring to this chapter by ~~name~~
 32 citation; and except as to proceedings in process on July 1,
 33 1975, this chapter shall be construed to apply to all covered
 34 agency proceedings and all agency action not expressly exempted
 35 by this chapter or by another statute specifically referring to

1 this chapter by ~~name~~ citation.

2 3. An agency shall have only that authority or discretion
3 delegated to or conferred upon the agency by law and shall not
4 expand or enlarge its authority or discretion beyond the powers
5 delegated to or conferred upon the agency. Unless otherwise
6 specifically provided in statute, a grant of rulemaking
7 authority shall be construed narrowly.

8 Sec. 13. NEW SECTION. **17A.24 Rule implementation of federal**
9 **statute, regulation, or policy.**

10 1. Except as otherwise explicitly authorized by state law,
11 an agency charged with the implementation of a federal statute,
12 regulation, or policy shall not implement the federal statute,
13 regulation, or policy in a manner that exceeds the specific
14 requirements of the federal statute, regulation, or policy.

15 2. Any portion of an agency rule or policy that implements
16 a federal statute, regulation, or policy and that exceeds the
17 specific requirements of the federal statute, regulation, or
18 policy is automatically superceded by the specific requirements
19 of that federal statute, regulation, or policy.

20 Sec. 14. Section 80A.4, subsection 1, paragraph g, Code
21 2011, is amended to read as follows:

22 g. Has not been convicted of a ~~crime described in section~~
23 ~~708.3, 708.4, 708.5, 708.6, 708.8, or 708.9~~ felony.

24 Sec. 15. Section 99D.7, subsection 19, Code Supplement
25 2011, is amended to read as follows:

26 19. To revoke or suspend licenses and impose fines not to
27 exceed one thousand dollars. The commission shall not treat
28 a deferred judgment or a final order resulting in a deferred
29 judgment, as deferred judgment is defined in section 907.1,
30 as a conviction in determining whether there are grounds for
31 licensee discipline or license denial, unless the deferred
32 judgment is withdrawn and judgment is entered as provided in
33 section 907.3, subsection 1.

34 Sec. 16. Section 99F.4, subsection 12, Code 2011, is amended
35 to read as follows:

1 12. To assess a fine and revoke or suspend licenses. The
2 commission shall not treat a deferred judgment or a final
3 order resulting in a deferred judgment, as deferred judgment
4 is defined in section 907.1, as a conviction in determining
5 whether there are grounds for licensee discipline or license
6 denial, unless the deferred judgment is withdrawn and judgment
7 is entered as provided in section 907.3, subsection 1.

8 Sec. 17. Section 99G.24, subsection 7, paragraph a, Code
9 2011, is amended to read as follows:

10 a. Has been convicted of a ~~criminal offense~~ felony, an
11 aggravated misdemeanor, or public offense related to the
12 security or integrity of the lottery in this or any other
13 jurisdiction.

14 Sec. 18. Section 99G.24, subsection 7, paragraph a, Code
15 2011, is amended to read as follows:

16 a. Has been convicted of a ~~criminal offense~~ an aggravated
17 misdemeanor or felony related to the security or integrity of
18 the lottery in this or any other jurisdiction.

19 Sec. 19. Section 135C.33, subsection 1, paragraph a, Code
20 2011, is amended to read as follows:

21 a. For the purposes of this section, ~~the term "crime" does~~
22 ~~not include offenses under chapter 321 classified as a simple~~
23 ~~misdemeanor or equivalent simple misdemeanor offenses from~~
24 ~~another jurisdiction~~ means an aggravated misdemeanor or felony.

25 Sec. 20. Section 147.55, subsection 5, Code 2011, is amended
26 to read as follows:

27 5. Conviction of a ~~crime~~ an aggravated misdemeanor or felony
28 related to the profession or occupation of the licensee or the
29 conviction of ~~any crime~~ an aggravated misdemeanor or felony
30 that would directly affect the licensee's ability to practice
31 within a profession. A copy of the record of conviction ~~or~~
32 ~~plea of guilty~~ shall be conclusive evidence of the conviction.

33 Sec. 21. Section 148.6, subsection 2, paragraph b, Code
34 2011, is amended to read as follows:

35 b. Being convicted of a felony in the courts of this state

1 or another state, territory, or country. Conviction as used in
 2 this paragraph shall include a conviction of an offense which
 3 if committed in this state would be deemed a felony without
 4 regard to its designation elsewhere, ~~or a criminal proceeding~~
 5 ~~in which a finding or verdict of guilt is made or returned, but~~
 6 ~~the adjudication of guilt is either withheld or not entered.~~
 7 A certified copy of the final order or judgment of conviction
 8 ~~or plea of guilty~~ in this state or in another state shall be
 9 conclusive evidence of the conviction.

10 Sec. 22. Section 153.34, subsection 9, Code 2011, is amended
 11 to read as follows:

12 9. For the conviction of a felony in the courts of this
 13 state or another state, territory, or country. Conviction as
 14 used in this subsection includes a conviction of an offense
 15 which if committed in this state would be a felony without
 16 regard to its designation elsewhere, ~~and includes a finding or~~
 17 ~~verdict of guilt made or returned in a criminal proceeding even~~
 18 ~~if the adjudication of guilt is withheld or not entered.~~ A
 19 certified copy of the final order or judgment of conviction ~~or~~
 20 ~~plea of guilty~~ in this state or in another state constitutes
 21 conclusive evidence of the conviction.

22 Sec. 23. Section 156.9, subsection 2, paragraph e, Code
 23 2011, is amended to read as follows:

24 e. Conviction of ~~any crime~~ an aggravated misdemeanor
 25 or felony related to the practice of mortuary science or
 26 implicating the licensee's competence to safely perform
 27 mortuary science services, including but not limited to a
 28 ~~crime~~ an aggravated misdemeanor or felony involving moral
 29 character, dishonesty, fraud, theft, embezzlement, extortion,
 30 or controlled substances, in a court of competent jurisdiction
 31 in this state, or in another state, territory, or district of
 32 the United States, or in a foreign jurisdiction. ~~For purposes~~
 33 ~~of this paragraph, "conviction" includes a guilty plea, deferred~~
 34 ~~judgment, or other finding of guilt.~~ A certified copy of the
 35 judgment is ~~prima facie~~ conclusive evidence of the conviction.

1 Sec. 24. Section 169.13, subsection 1, paragraph b, Code
2 2011, is amended to read as follows:

3 b. Being convicted of a felony in the courts of this state
4 or another state, territory, or country. Conviction as used
5 in this paragraph includes a conviction of an offense which
6 if committed in this state would be deemed a felony without
7 regard to its designation elsewhere, ~~or a criminal proceeding~~
8 ~~in which a finding or verdict of guilt is made or returned, but~~
9 ~~the adjudication or guilt is either withheld or not entered.~~ A
10 certified copy of the final order or judgment of conviction ~~or~~
11 ~~plea of guilty~~ in this state or in another state is conclusive
12 evidence of the conviction.

13 Sec. 25. Section 272C.1, subsection 6, Code 2011, is amended
14 by adding the following new paragraph:

15 NEW PARAGRAPH. *ag.* The state racing and gaming commission
16 created pursuant to section 99D.5.

17 Sec. 26. Section 272C.3, Code 2011, is amended by adding the
18 following new subsection:

19 NEW SUBSECTION. 5. Notwithstanding any other provision
20 of law to the contrary, a licensing board shall not treat a
21 deferred judgment or a final order resulting in a deferred
22 judgment, as deferred judgment is defined in section 907.1,
23 as a conviction in determining whether there are grounds for
24 licensee discipline or license denial, unless the deferred
25 judgment is withdrawn and judgment is entered as provided in
26 section 907.3, subsection 1.

27 Sec. 27. Section 523A.503, subsection 1, paragraph f, Code
28 2011, is amended to read as follows:

29 f. Conviction of ~~a criminal offense~~ an aggravated
30 misdemeanor or felony involving dishonesty or a false statement
31 including but not limited to fraud, theft, misappropriation of
32 funds, falsification of documents, deceptive acts or practices,
33 or other related offenses.

34 Sec. 28. Section 543B.15, subsection 3, paragraph c, Code
35 2011, is amended by striking the paragraph.

1 Sec. 29. Section 543B.29, subsection 1, paragraph f,
2 unnumbered paragraph 1, Code Supplement 2011, is amended by
3 striking the unnumbered paragraph.

4 Sec. 30. ENVIRONMENTAL REGULATION STUDY.

5 1. The legislative council, in consultation with the
6 department of natural resources, shall establish a study to
7 analyze the projected financial effects of current and proposed
8 United States environmental protection agency regulations and
9 Iowa department of natural resources rules on Iowa cities over
10 a ten-year period.

11 2. The study should include an analysis of projected
12 financial costs of such regulations and rules on a hypothetical
13 small Iowa community, medium-sized Iowa community, and large
14 Iowa community.

15 3. The study shall be concluded by June 30, 2013, and a
16 report shall be provided to the members of the general assembly
17 and to the governor.